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THE ZOLA TRIAL.—In the year 1894, Alfred Dreyfus, a captain in the French Artillery and attached to the general staff, was found guilty by a court-martial of furnishing secret information concerning French military affairs to a foreign power. In consequence he was degraded before the army and sent to a life imprisonment. The evidence on which he was convicted, so far as was made known to Dreyfus, his counsel or the public, was a memorandum or *bordereau* which announced the transmission of despatches containing the secret information to agents of the foreign power. It came to be believed by many that the real basis of the conviction was another document or documents not revealed to the prisoner or his counsel. In 1896 Colonel Picquart, on strength of a resemblance of handwriting, charged Major Esterhazy with being the author of the *bordereau.* A court-martial was instituted, before which Esterhazy was tried and acquitted. M. Emile Zola, in a letter published in a Paris newspaper, the *Aurore*, discussing these proceedings, stated that the Esterhazy court-martial acquitted the accused by order of General Billot, the Minister of War. On February 7th of this year the trial, before the Assize Court of the Seine, of M. Zola and M. Perreux, the publisher of the *Aurore* for defamation of the court-martial, began on plaint of the Minister of War, under a section of the Press Law covering such a case.

M. Zola undertook to justify his statement on the ground that it was true. The technical and exact issue of the trial was then whether the Esterhazy court-martial acquitted the defendant by order of the Minister of War. But behind this were questions which could hardly fail to arise. Did the Esterhazy court-martial acquit legally? Did the Dreyfus court-martial convict illegally? And back of these questions was one only remotely connected, though unfortunately insisted on by the defendant. Was Dreyfus guilty? It will be seen that the prosecution had, from a legal point of view, a decisive advantage. The issue before the jury was

not the issue intended to be raised. In explanation of this, however, it must be noticed that if M. Zola had not been willing to put himself technically in the wrong by saying rather more than he meant, in all likelihood he would never have been tried, and so would have lost the possibility of doing indirectly what there was no hope of doing directly; that is, bringing to light the methods of the courts-martial.

The court decided that the evidence should be strictly confined to the Esterhazy court-martial, and that the Dreyfus affair should not be touched upon. In carrying out this conceivably proper decision, however, the court were not entirely consistent. The defence were kept well within bounds, it is true, but witnesses for the prosecution were freely permitted to assure the jury that Dreyfus was guilty. In fact this discrimination on the part of the court gave opportunity for the most dramatic incident of the trial which occurred towards its close and turned the tide that was beginning to run in spite of everything in favor of the defendant. The generals, who from the first were allowed to "cast their swords into the scales of justice," executed a brilliant *coup de théâtre*. This was when General de Pellieux announced to the jury that Dreyfus was guilty beyond shadow of a doubt, and that this was amply proved by a document which he had seen; namely, a letter from one foreign military *attaché* to another containing words to this effect: "Do not say anything of our dealings with *cette canaille de D . . .*" On the following day General de Boisdeffre was allowed to reiterate the testimony of General de Pellieux. When M. Labori, Zola's counsel, rose to question the generals he was forbidden to do so on the ground that the subject-matter of their testimony was outside the scope of the court's inquiry. It should be noted that this document was not shown to be the secret document on which it was claimed that Dreyfus was convicted.

The most striking general features of the case may be summed up in a paragraph. The witnesses told the jury what they knew of the matter, what they had heard about it, and what they thought about it. The manner of giving evidence in many cases can be described only as speech-making. M. Jaurés, and the venerable M. Gremiaux, a professor in the École Polytechnique, harangued the jury in behalf of the defendant; General de Pellieux several times made speeches to the jury of a highly inflammatory character appealing to their patriotism, their generosity, their hopes and their fears. The witnesses usually commented freely on the evidence, drew inferences and argued. General also was the questioning of witnesses by each other. M. Zola too, questioned the witnesses, and made suggestions to the court. There was no case where a witness was compelled to answer. The counsel gave evidence to the jury without varying their character as counsel. Perhaps the most remarkable feature of all was the attitude of the military witnesses. Attending because they were compelled by the court to do so, they answered questions only when they pleased, and though apparently holding themselves above and free from any duty to a civil tribunal, yet dominated the trial and were the most potent factor in it.

It was impossible for the jury to bring in any other verdict than "Guilty." On the technical issue it was a correct result. It is the impression of the writer that the results reached by the courts-martial were just also.

On the other hand it is an almost irresistible conclusion from the report of the Zola trial, that all three trials were illegally conducted even according to French law. This does not leave out of consideration that the first

two tribunals were courts-martial, and that an extraordinary course to a certain degree is proper when state and military secrets are involved. It was abundantly proved in the Zola trial, not by the defence, but by witnesses for the prosecution, that Dreyfus was convicted either on plainly insufficient evidence, namely, the *bordereau*, or on illegal evidence, namely, a secret document not disclosed to himself or his counsel. It was abundantly proved by the same witnesses that the Esterhazy court-martial, out of respect for the *chose jugée* or for other reasons, did not try the accused at all. Until the *Cour de Cassation* has passed on the exceptions taken to the conduct of the Zola trial itself, it may be unwise to say that that too was on its face illegal, but such is the writer's conviction. If it is permitted to point out a conclusion when it appears to be so obvious, it may be said that judging from these trials, the French people either fail to distinguish between a just result legally reached and a just result reached illegally; or if they perceive the distinction, consider it as a matter of indifference. Probably the latter statement is the truer one. The contrast to Anglo-Saxon legal ideas is glaring. Conceivably a neutral party might prefer one idea or the other. The Anglo-Saxon may be pardoned for viewing the comparison with complacency.

ARREST ON A BAIL PIECE. — An ancient right, notable by reason of the infrequency with which it is exercised at the present day, is illustrated in the case of *Von der Ahe's Petition* (reported in the Pittsburg Commercial Gazette, Feb. 12, 1898). Von der Ahe was the defendant in an action on a debt in the State of Pennsylvania, and had been admitted to bail. The case went against him, but he had gone into the State of Missouri, and refused either to pay or to give himself up. His bail finding himself liable, took forcible measures to bring the principal to Pennsylvania in order to surrender him. He employed a detective, who arrested Von der Ahe in St. Louis, Mo., and brought him to Pittsburg. Von der Ahe thereupon applied to Judge Buffington of the Federal court for a writ of *habeas corpus*, but the court justified the seizure and remanded the petitioner to the custody of his bail.

The right of a bail to arrest the body of his principal, although at first sight anomalous, is consistent with the early conception of the relationship between the parties. The bail has been looked upon as the principal's gaoler, and the principal when bailed has been deemed as truly imprisoned as if he were still confined by bolts and bars. The bail may discharge himself whenever he pleases by surrender of the principal; to this end he can imprison him, pursue him, arrest him on Sunday or on his way to court in another suit. He can even break into his house to take him; and he may make the arrest either in person or by agent. "The bail have their principal on a string, and may pull the string whenever they please and render him in their discharge." *Anonymous*, 6 Mod. 231. Any liberty, therefore, allowed to the principal is by the indulgence of his bail, and as was said by Lord Hardwicke in *Ex parte Gibbons*, 1 Atk. 237, to "prevent a person who has been so kind as to give the principal his liberty from taking him up in discharge of himself would be very hard."

The authority of a bail over his principal being virtually that of a gaoler over a prisoner, the further question is raised whether this relationship follows the principal beyond the limits of the State where it arises.